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February 25, 2008

**BY E-FILE**

The Honorable Mary Pat Thyng  
United States District Court  
844 North King Street  
Lock Box 8  
Wilmington, DE 19801

Re: Tobin v. Gordon et al., No. 04-1211

Dear Judge Thyng:

This letter is respectfully submitted on behalf of all defendants in the above-referenced matter. During the hearing held via teleconference before Your Honor on February 11, 2008, Plaintiff's counsel stated that Plaintiff intended to seek attorney's fees in the amount of approximately \$72,000 - \$75,000. He further stated that he would forward an itemized statement of the hours worked to defense counsel within the following week.

Based on this representation, Your Honor directed the parties to confer and attempt to reach agreement on the matter of fees without the Court's involvement. Another teleconference was set for March 31, 2008, at which time the parties would report to the Court whether, in fact, agreement had been reached, or whether the Court's involvement would be required.

Despite Plaintiff's counsel's representation, Defendants have not received an itemized statement of hours claimed. Instead, Plaintiff's counsel has refused to provide any data to demonstrate the reasonableness of the requested hourly rates and number of hours claimed. Plaintiff has notified defense counsel that Plaintiff will not produce even the number of hours claimed until Defendants consent to the claimed hourly rates of five attorneys who apparently

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intend to submit requests for compensation.<sup>1</sup> And in response to Defendants' request for biographical information about two of the attorneys, plaintiff provided the number of years the attorney has been in practice and the school from which she graduated. This position does not comply with the Court's prior order or with the well-established procedure for the resolution of attorney's fees.

The plaintiff is required to submit evidence supporting the hours and rates requested.<sup>2</sup> The burden of proof is on those claiming reimbursement.<sup>3</sup> An attorney requesting a fee award must establish that rate with reference to "the community billing rate charged by attorneys of equivalent skill and experience performing work of similar complexity."<sup>4</sup> The Third Circuit has explained that the degree of specificity of records required to support a request for attorney's fees is "some fairly definite information as to the hours devoted to various general activities."<sup>5</sup>

Plaintiff's refusal to submit any information whatsoever about the claimed number of hours and the deficient information provided to support the reasonableness of the claimed hourly rates precludes any meaningful review by Defendants. Contrary to the position taken by Plaintiff, Defendants have no obligation to consent to any portion of the fee request until a full and complete submission is made. There can be no meaningful discussion until Plaintiff produces this information.

As always, counsel is available to the Court to provide any additional information or to provide assistance in any way.

Respectfully submitted,



Margaret M. DiBianca (No. 4539)

Cc: All Registered Counsel (via E-file Notice)

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<sup>1</sup> See E-Mail John LaRosa, Esq. to Margaret M. DiBianca, Esq., dated February 18, 2008, attached as Exhibit 1.

<sup>2</sup> Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990); see also Hensley v. Eckerhart, 461 U.S. 424, 433 (1983).

<sup>3</sup> Rode, 892 F.2d at 1183.

<sup>4</sup> Student Public Interest Research Group v. AT&T Bell Labs., 842 F.2d 1436, 1450 (1988).

<sup>5</sup> Pawlak v. Greenawalt, 713 F.2d 972, 978 (3d Cir. 1983) (citing Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp., 487 F.2d 161, 167 (3d Cir. 1973)).

# EXHIBIT

# 1

**DiBianca, Margaret**

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**From:** John M. LaRosa, Esquire [JLR@LaRosaLaw.com]  
**Sent:** Monday, February 18, 2008 5:43 PM  
**To:** DiBianca, Margaret  
**Cc:** Raeann Warner; Hertzog, Cheryl Esq.; Kathleen Jennings; Butler; Wilson, Gregg; TNS@NeubergerLaw.com; Neuberger, Esq., Stephen  
**Subject:** Tobin v. Gordon: Biographical Information for Plaintiff's Attorneys' Hourly Rates

Molly:

Attorney Warner is a Widener University School of Law School graduate, admitted in Delaware and the District of Delaware. She has been licensed to practice law since 2006.

Attorney Hertzog is a Villanova University School of Law graduate, admitted in Pennsylvania and New Jersey. She has been licensed to practice law since 2005.

We will submit the itemized report with our hours only after defendants take a position on our hourly rates. Once the hourly rate issue is resolved, we will submit our statement with our hours for the lodestar. So to clarify my prior message below from Friday, February 15, 2008 @ 9:43 PM, please advise us by the end of the day on Friday, Feb. 22, 2008, whether defendants will contest plaintiff's counsel's hourly rates.

Very truly yours,

John M. LaRosa

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(302) 655-9329 (fax)  
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----- Original Message -----

**From:** DiBianca, Margaret  
**To:** John M. LaRosa, Esquire  
**Cc:** Wilson, Gregg ; Butler ; Kathleen Jennings  
**Sent:** Saturday, February 16, 2008 12:31 PM  
**Subject:** RE: Tobin v. Gordon: Plaintiff's Recovery and Attorneys' Fees

John:

Thank you for being so prompt with the fee resolution. I have not received the itemized statement yet, though. During Monday's teleconference, Mr. Neuberger stated that he would send that within the next few days. Once we receive that, I will have a better answer for you. And, because I do not know Ms. Hertzog or Ms. Warner, would you kindly include their cv's or bio's with the itemized report?

That will be of great help.

Thank you,

Molly DiBianca

Margaret M. DiBianca, Esq.  
Young Conway Stargatt & Taylor, LLP  
The Brandywine Building  
1000 West Street, 17th Floor  
P.O. Box 391  
Wilmington, DE 19899-0391  
Phone: 302-571-5008  
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From: John M. LaRosa, Esquire [mailto:JLR@LaRosaLaw.com]  
Sent: Friday, February 15, 2008 9:43 PM  
To: DiBianca, Margaret  
Cc: Neuberger, Esq. Thomas S.  
Subject: Tobin v. Gordon: Plaintiff's Recovery and Attorneys' Fees

Molly:

Please have the County cut and send us the check for Plaintiff Henry V. Tobin III in the amount of \$25,000.

Also, regarding attorneys' fees, my hourly rate is \$250.

The hourly rates for The Neuberger Firm's attorneys are as follows:

Thomas S. Neuberger, Esq.: \$450;  
Stephen J. Neuberger, Esq.: \$250;  
Cheryl A. Hertzog, Esq.: \$170; and  
Raeann Warner, Esq.: \$170.

Please advise us by the end of the day on Friday, Feb. 22nd whether Defendants will contest our fees.

Very truly yours,

John M. LaRosa

\*\*\*\*\*

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